

I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
MONTE M.F. COOPER (STATE BAR NO. 196746)
mcooper@orrick.com
THERESA A. SUTTON (STATE BAR NO. 211857)
tsutton@orrick.com
MORVARID METANAT (STATE BAR NO. 268228)
mmetanat@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: 650-614-7400
Facsimile: 650-614-7401

Attorneys for Plaintiff
FACEBOOK, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FACEBOOK, INC.,

Plaintiff,

v.

POWER VENTURES, INC. a Cayman Island
Corporation; STEVE VACHANI, an
individual; DOE 1, d/b/a POWER.COM,
DOES 2-25, inclusive,

Defendants.

Case No. 5:08-cv-05780 JW

**DECLARATION OF JOSEPH
CUTLER IN SUPPORT OF
FACEBOOK, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
FOR LIABILITY UNDER THE CAN-
SPAM ACT**

Date: December 19, 2011
Time: 9:00 a.m.
Judge: Hon. James Ware
Courtroom: 9, 19th Floor

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1 I, Joseph Cutler, declare as follows:

2 1. I make this declaration in support of Facebook, Inc.'s Motion for Partial Summary
3 Judgment For Liability Under the CAN-SPAM Act. I have personal knowledge of the matters
4 stated herein, and if called as a witness could and would testify competently thereto.

5 2. I am an associate at the Seattle, Washington office of the law firm Perkins Coie
6 LLP. I am a member of the firm's litigation group. In that role, I have in the past been engaged
7 by the Plaintiff in this case, Facebook, Inc, ("Facebook"), to help it take legal action against
8 illegal spamming, phishing, and other forms of malicious Internet behavior.

9 3. [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 4. [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 5. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 6. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 7. Following my sending the cease and desist letter, I was contacted by Power
24 Ventures' CEO, Steve Vachani. Mr. Vachani said he was the owner of Power Ventures, that he
25 operated the Power website, and that he had the ability to continue or cease Power's activities.

26 8. In December 2008 through early 2009, I had numerous discussions with Mr.
27 Vachani about the functionality of the Power website. Through our discussions and additional
28 investigation, I learned of numerous other activities by Defendants, and I also asked that those

1 activities stop. In nearly all of our discussions, I continued to demand that Defendants cease their
2 unlawful activities. Our discussions occurred via email as well as on the telephone.

3 9. During our discussions, Mr. Vachani repeatedly assured me that the functionality
4 of the Power website would be changed to comply with Facebook's requests and that the Power
5 website's connection to Facebook would use Facebook's authorized "Facebook Connect" service.
6 Despite his repeated assurances, Mr. Vachani failed to make the changes to the Power website
7 that he had committed to make. One example is described below.

8 10. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED].

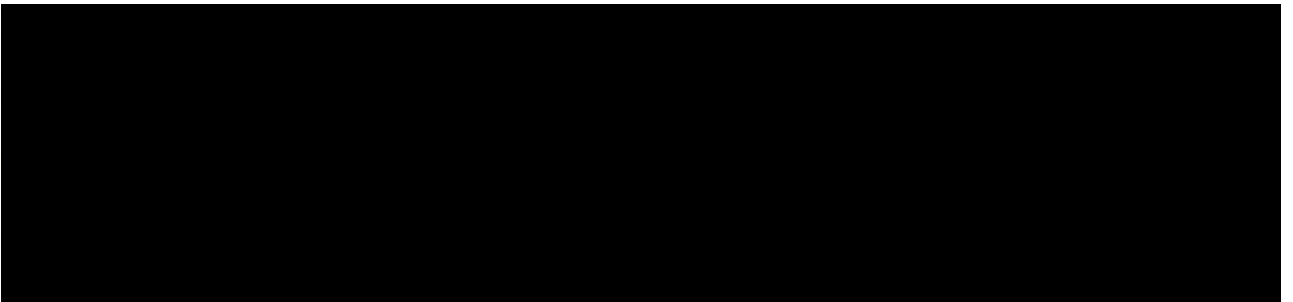
15 11. On December 15, 2008, I sent an email to Mr. Vachani responding to his
16 December 12, 2008 email. In that message, I reconfirmed that Facebook expected the Power
17 website to delete all user data and to fully comply with the Facebook Connect policies and all
18 other applicable Facebook Terms of Use and guidelines within two weeks, or by December 26,
19 2008.

20 12. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 13. On December 27, 2008, I received an email from Mr. Vachani informing me that
26 he and Power Ventures would not honor his earlier promises to me. Instead, the email notified
27 Facebook that the Power website would not remove any Facebook content, would not use the
28 authorized Facebook Connect implementation, and would not discontinue its spam campaign

1 aimed at soliciting Facebook users to join the Power Website. A true and correct copy of the
2 email I received from Mr. Vachani informing me of this decision is attached hereto as **Exhibit B**.

3 14. Left with no recourse, Facebook filed the present suit on December 30, 2008. I
4 prepared a chronology of the events that led to this action, including an accurate characterization
5 of my discussions with Mr. Vachani, which is attached hereto as **Exhibit C**. After Facebook filed
6 suit, it continued its attempts to reach an agreement with the owners of the Power website to stop
7 its violations of the company's Terms of Use. Those efforts are also reflected in the attached
8 chronology.



14 I declare under the penalty of perjury under the laws of the United States of America that
15 the foregoing is true and correct. This Declaration is executed on this 14th day of November,
16 2011, at Seattle, Washington.

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Joseph Cutler